

Donations of Property: Gain Quarterly Contributions while Reducing Liability and Risk Management Headaches; Part II

As outlined in our September 6th [G&G Law Alert™](#), the DST/1031 Exchange allows your donors who own real estate to donate the income stream from the DST/1031 replacement property, instead of the real estate itself. Here, we outline the transaction in relatively more detail.

The Like-Kind Exchange. Typically on the sale of real estate, up to 30% of the Seller's gain will be paid on capital gains taxes (15 or 20% at the Federal level and more at the State level). Through a 1031 Like-Kind Exchange, however, 100% of those taxes can be *deferred*. Section 1031 of the Internal Revenue Service Code allows a Seller to exchange the original property for a different property of equal or greater value that is of "like kind" (the "replacement property"). The Seller uses the proceeds from the sale of the real estate to purchase its like-kind replacement. The tax deferral extends until the Seller ultimately sells the replacement property in a non-1031 transaction.

The Delaware Statutory Trust. Instead of using real estate for the like-kind replacement property, however, the Seller can choose a *Delaware Statutory Trust*. Through the DST, the Seller exchanges its real estate for securities in commercial investment-grade properties. The DST invests in properties such as commercial office, medical office, triple-net retail, student or multi-family housing, self-storage facilities, and industrial property. Licensed Real Estate Sponsor Companies identify the target real estate, enter into a purchase agreement with the Seller, conduct the necessary due diligence, secure the financing, and buy the assets (taking title in the name of the DST with the Sponsor serving as Trustee). The Seller then purchases from the Sponsor an equivalent value interest in the DST. That DST interest generates a regular monthly income stream for the Seller.

This steady income stream, without the headache of property management, is one of the main benefits of a DST/1031. Historically, DST/1031 investments offer 5.0% to 6.5% annual preferred returns. DST-structured real estate investments provide investors with a current, recurring, and predictable stream of income that is paid monthly and may be partially sheltered from taxes.

Tax-Free Benefit to Donor; Income Benefit to Your NonProfit. The other benefit to the Seller is the avoidance of taxes on the income stream. The Seller can direct the income to anyone she chooses, such as her heirs or another trust. As explained, the original sale defers capital gains tax and the income stream may be partially sheltered. But if the Seller directs the income to a *501(c)(3) nonprofit*, the income is completely *tax-free*. In other words, by routing the income to a charity, the Seller/Donor not only defers capital gains tax payments on the original sale of the real estate, but avoids taxes altogether on the DST/1031 income stream from that sale.

Meanwhile, the Seller/Donor retains complete control over the income stream of the DST/1031. If the Seller/Donor decides to redirect all or part of the income to a grandchild or another nonprofit, for example, she can just pick up the phone or fill out a form to change the beneficiary. No lawyers or accountants necessary.

The benefit to the nonprofit, of course, comes in the form of a steady stream of monthly income without the hassle of receiving and selling real estate. Everybody wins.

If you would like to introduce your donors that own real estate to the DST/1031 Exchange, Gammon & Grange Consulting Group, LLC can educate them on its offer of control, flexibility, and deferral of taxes. For immediate and personalized information, please contact Steve West at 703.761.5024; srw@gg-consult.net.

Attorney Spotlight



Steve West

For over 25 years, Mr. West's legal practice has focused on construction law and commercial real estate development. He provides expert advice to clients on acquisition and disposition of commercial properties, site planning and development, project financing, leasing, and DST/1031 Exchanges.

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